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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,232	02/05/2001	Lorraine Mignault	82223-202	1664

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EXAMINER	
WANG, SHENGJUN	
ART UNIT	**PAPER NUMBER**
1617	

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/762,232	MIGNAULT, LORRAINE	
	Examiner	Art Unit	
	Shengjun Wang	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 September 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,5-9,17-20,22,24-26 and 30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,5-9,17-20,22,24-26 and 30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Receipt of applicants' Declaration, amendments and remarks submitted September 3, 2004 is acknowledged.

Claim Rejections 35 U.S.C. 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1, 5-9, 17-20, 22, 24-26, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weed (of record) in view of Puchalski, Jr. et al. (of record) and Jakobson et al. (of record), in further view of Ito (US 5,055,189), or Patrasenko et al.

3. Weed teaches hot water extraction of oatstraw (see page 205). The extracts are in the form of oatstraw baths. Weed states "use an oatstraw footbath to soak away stink, sweat, cold, and pain from your tender tootsies," (page 205). For purposes of examination, water as disclosed by Weed is considered to be equivalent to "filtered and magnetized water" as claimed in claim 2. Weed teaches the use of aqueous extracts of oatstraw applied externally to treat pain from any internal distress, including uterine pain. For purposes of examination, uterine pain is considered to meet the limitation of menstrual cramps. Weed also teaches the use of the extract for treating skin diseases, flaky or dry skin, wound, and eye irritations. A bath composition meets the limitation of body wash. Weed further teaches that it is well known that oat straw provide many health related benefit, including reducing pain (see pages 200-205). Infusion is one of the

common forms of oat straw composition well employed (page 200). Note, ordinary skill in the art would understand that infusion is liquid product obtained by infusing, and infuse mean to steep or soak in order to extract soluble elements or active ingredient (see dictionary definitions of "infusion" and "infuse," American Heritage Dictionary).

4. Weed does not teach expressly to make water extract of oatstraw as herein claimed, or the addition of glycerin and lavender oil, as well as weight percentages of the same and teaching of a process for preparing a composition by addition of the components.

5. However, Puchalski teaches shampoo and bath and shower gels. Puchalski teaches that a polyol to enhance skin feel may be present in the compositions, including glycerin (see col. 3, lines 22-32). Jakobson teaches the addition of oils such as lavender oil in order to impart a medicinal activity to the composition in that the oil exert a relieving or healing action on the human body and/or exhibit a therapeutical activity by means of relaxing, refreshing, or vitalizing effect.

6. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make a water extract (infusion, or tincture) and combined with glycerin in order to benefit from the enhanced skin feel imparted by glycerin as taught by Puchalski and by the addition of lavender oil in order to benefit from the relieving or healing action of lavender oil as taught by Jacobson.

7. One of ordinary skill in the art would have been motivated to make a water extract (infusion, or tincture) because oatstraw are known to provide many health related benefit and the active ingredients are soluble in water. With respect to the weight percentages of the components, differences in concentration will not support the patentability of subject matter

encompassed by the prior art unless there is evidence indicating such concentration is critical. Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable range by routine experimentation. In re Aller 220 F.2d 454, 105 USPQ 233, 235 (CCPA 1955). With respect to the claimed process for preparing the composition, the process involves combining the recited components. It is the position of the examiner that a process for preparing a composition which merely the process of combining the components is render obvious by the composition itself. With respect to the limitation of "magnetically treated water," note the employment of magnetically treated water for preparing therapeutical composition would have been obvious in view of Ito, or Patrasenko et al. Ito, or Patrasenko et al teach magnetic treatment provide cleaner water. See column 1, lines 45-67 in Ito and the abstract of Patrasenko et al. It would have been obvious to one of ordinary skill in the art to using clean water to make therapeutical composition.

Response to the Arguments

Applicants' declaration, amendments and remarks, and the declaration by Richard Green submitted September 3, 2004 have been fully considered, but are not persuasive.

8. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., minerals in water) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicants argue that "magnetically treated water" is distinct from deionized water and provides unexpected benefit. Both the declarations are trying to prove this position. However, the claims as pending do not require the

presents of minerals. Further, it would have been well-understood that the mineral content in water would vary widely depending on the sources of water.

Regarding the establishment of unexpected results, a few notable principles are well settled. It is applicant's burden to explain any proffered data and establish how any results therein should be taken to be unexpected and significant. See MPEP 716.02 (b). The claims must be commensurate in the scope with any evidence of unexpected results. See MPEP 716.02 (d). Further, A DECLARATION UNDER 37 CFR 1.132 must compare the claimed subject matter with the closest prior art in order to be effective to rebut a prima facie case if obviousness. See, MPEP 716.02 (e).

9. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The citing of Ito and Patrasenko is merely to show that magnetic treatment of water is well-known in the art and would have been obvious to one of ordinary skill in the art to use such process for a cleaner water. Take the cited references as a whole, the claimed composition and process would have been obvious as discussed above.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang whose telephone number is (571) 272-0632. The examiner can normally be reached on Monday to Friday from 7:00 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SHENGJUN WANG
PRIMARY EXAMINER

Shengjun Wang
Primary Examiner
Art Unit 1617